United States Department of Labor Employees' Compensation Appeals Board

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P.P., Appellant))
and) Docket No. 16-0901
DEPARTMENT OF THE NAVY, NAVAL FACILITIES ENGINEERING COMMAND) Issued: August 11, 2016)
CENTERS, Dahlgren, VA, Employer	, -
Appearances: Toby Rubenstein, for the appellant ¹ Office of Solicitor, for the Director	Case Submitted on the Record

ORDER REMANDING CASE

Before:

CHRISTOPHER J. GODFREY, Chief Judge PATRICIA H. FITZGERALD, Deputy Chief Judge COLLEEN DUFFY KIKO, Judge

JURISDICTION

On March 29, 2016 appellant, through his representative, filed a timely appeal from an October 23, 2015 nonmerit decision of the Office of Workers' Compensation Programs (OWCP), which found that his request for reconsideration was untimely filed and failed to present clear evidence of error. The appeal was docketed as No. 16-0901.

This case was previously on appeal. In an August 8, 2012 merit decision, the Board found that appellant had not filed a timely claim for compensation and therefore, his claim was barred by the applicable time limitation provisions of FECA.² In a July 21, 2013 letter, received by OWCP on August 2, 2013, appellant requested that OWCP review his claim and submitted arguments in support of his request. He indicated that this was "an appeal back to you on the USDOL, Employees' Compensation Appeals Board (ECAB) Decision and Order on above

¹ James A. Haynes, Alternate Judge, participated in the original decision but was no longer a member of the Board effective November 16, 2015.

² Docket No. 12-272 (issued August 8, 2012).

docket issued on August 8, 2012." In a July 25, 2015 letter, appellant's representative requested reconsideration. By decision dated October 23, 2015, OWCP denied his reconsideration request on the grounds that it was untimely filed and failed to present clear evidence of error on the part of OWCP.

The Board finds that appellant's July 21, 2013 letter, received August 2, 2013, was a timely request for reconsideration. Although the letter did not use the word reconsideration, appellant stated that he wanted OWCP to "review" his claim and he provided several arguments to support his assertion that his claim was valid. Section 10.607(a) of the implementing regulations provide that an application for reconsideration must be received within one year of the date of OWCP's decision for which review is sought.

The Board notes that the last merit decision was the Board's August 8, 2012 decision⁵ and appellant's request for reconsideration was received by OWCP on August 2, 2013. As the request was received within one year of the August 8, 2012 decision, it was timely filed.

Because appellant filed a timely reconsideration request, the case will be remanded to OWCP for application of the standard for reviewing timely requests for reconsideration.⁶ The "clear evidence of error" standard utilized by OWCP in its October 23, 2015 decision is appropriate only for untimely reconsideration requests. After such further development as the OWCP deems necessary, it should issue an appropriate decision.

³ While no special form is required, a reconsideration request must be in writing, identify the decision and specific issue(s) for which reconsideration is being requested, and be accompanied by relevant and pertinent new evidence or argument not previously considered. The application need not contain the word reconsideration. *Gladys Mercado*, 52 ECAB 255 (2001); *Vincente P. Taimanglo*, 45 ECAB 504 (1994); *D.W.*, Docket No. 12-1226 (issued November 26, 2012).

⁴ 20 C.F.R. § 10.607(a).

⁵ OWCP procedures provide that a right to reconsideration within one year accompanies any merit decision of the Board. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(a) (February 2016).

⁶ See 20 C.F.R. § 10.606(b)(3).

IT IS HEREBY ORDERED THAT the October 23, 2015 decision of the Office of Workers' Compensation Programs is set aside and remanded for further action consistent with this order of the Board.

Issued: August 11, 2016 Washington, DC

> Christopher J. Godfrey, Chief Judge Employees' Compensation Appeals Board

> Patricia H. Fitzgerald, Deputy Chief Judge Employees' Compensation Appeals Board

> Colleen Duffy Kiko, Judge Employees' Compensation Appeals Board